





THE
PRIVILEGES and PRACTICE
OF
Parliaments
IN
ENGLAND:

COLLECTED
Out of the Common Laws of
THIS
LAND.

Seen and allowed by the Learned in the Laws.

COMMENDED
To the High Court of Parliament.

L O N D O N,
Printed for Robert Harford at the Angel in Cornhill,
near the Royal Exchange, 1680.

THE

PROCEEDINGS

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Printed for a new edition at the
near the Royal Exchange

The principal Contents of this ensuing Discourse.

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A
DISCOURSE
OF THE
PRIVILEGE and PRACTICE
Of the High Court of
Parliament
IN
ENGLAND;

Collected out of the Common Laws of this Land.

THE most Common and best means for the preservation and conservation aswell of private as public Tranquillity and Society used in all Ages, and by all Nations, is by way of lawful Assembly, and Consultation, which we call *Parliament*, to look into the necessity of the public Condition, and so to fore-see seasonable remedy.

Where no Counsel is, the people fall: but where many Counsellors are, there is health, Prov. 11. & 14. Tully saith, Communis utilitatis derelictio contra naturam est. To desert the common profit is against nature. The Saxons called this Court *Miclegemot*, the great Assembly, and *Witenagemot*, the Assembly of wise Men; the Latine Authors of those times called it, *Commune Consilium*, *magna curia*, *generalis conventus*, &c. But *William* the Conqueror as it seemeth changed the name of this Court, and first called it by the name of *Parliament*. But manifest it is, that the Conqueror changed not the frame or Jurisdiction of this Court in any point; yea the very names which are attributed to this Court be-

before the Conquest, are continued after the Conquest to this day. And where some do suppose, that in the *Parliament* holden at *Westminster* in the 3 *Ed. 1.* called *Westminster* the first, the word *Parliament* first crept in, where it is called the first general *Parliament*, by the assent of the Archbishops, Bishops, Abbots, Earls, Barons, and all the Commonalty of the Land summoned to the same; yet it is manifest that the name of *Parliament*, was long before that time; and for proof thereof, note, 21 *Ed. 3. fol. 60.* and in Sir *Edward Cokes* Preface to his 9th Book, where it is fully proved; That the Conqueror himself did hold this *Parliament*, and other his mediate Successors. Although in the books of Statutes, mention is not made of any Statute before *Magna Charta*, in the 9th year of *Hen. 3.*

And this is not that Court, which in *France* beareth the name of *Parliament*, for they are but ordinary Courts of Justice: But this is that Court which both *England* and *Scotland* agreeeth in naming it *Parliament*, which the *French* call, *Assemblée de Estates*, or *Les Estates*: And the *Germans*, *A Rikes Daggh*, or *Diet*.

Of this Court it may be said, *Si vetustatem spectes est antiquissima, si dignitatem est honoratissima, si jurisdictionem est copiosissima.* If you look upon the Antiquity of it, tis most Ancient; if the Dignity, most Honourable; if the Jurisdiction, it is extraordinary Large. And as Sir *Edward Coke* observeth in his Preface to his 9 Book. This great and honourable Assembly hath a three-fold End; first, That the Subject might be kept from offending, that is, that offences might be prevented, both by good and provident Laws, and by due execution of them. Secondly, That Men might live safely in quiet; And thirdly, That all Men might receive Justice by certain Laws and holy Judgment. To the end that Justice might be the better administered, That questions and defects in Law, by this high Court of Parliament, be explained and brought to certainty and judgment.

Our Sovereign King *Charles* in his late Proclamation calls it, *The great Counsel of Us and Our Kingdom.*

And for so much as this great and principal Court is the King's Court, and the Court of the Kingdom, whereof the King is supreme Head and Governor, neither the Lords nor the Commons can summon it nor appoint any certain time or place for the Assembly

sembly of the Parliament; For that only doth appertain to the King to do. See the Statute 21 Ric. 2. c. 12. And in the King's name only such summons must be made, as an absolute Prerogative incident to his Crown and Dignity. Like as divers things do solely belong to the King, whereof the Subject hath nothing to do: as *fœdera percutere*, to make leagues, or *bellum indicere*, to proclaim War, 9 E. 4. fol. 6. The King only without the Subject, may make letters of *Denisation*, to whom and how many he will. And the King by his Proclamation, may make any Cōyn lawful mony of *England*; and many other things do appertain to the King as special flowers of his Crown.

And if the King happen to be in any forein part, yet the Parliament holden in this Realm in the King's absence must be summoned in the King's name under the *Teste* of the King's Lieutenant, as by the Statute 8 H. 5. c. 1. may appear.

Bracton saith, Parliaments have been holden by the King's Lieutenant, Procurator or Deputy, as in the 13 Ed. 2. the King constituted *Adomarum de Valentia Comitem Pembrociam custodem regni sui, & locum suum tenentem quamdiu Rex in partibus transmarinis moram fecerit.* *Adomarum de Valentia* Earl of Pembroke, keeper of his Kingdom and his Lieutenant, so long as the King should be retained by his occasions in Foreign parts.

And the King's of this Land have constituted as their Lieutenants or Deputies to summon the Parliament, 3 or 4 in a Commission as in the 24 of H. 8. at his being at Calice a Parliament was holden by Commission as followeth.

Henricus VIII. Dei gratia Angliæ, Franciæ, Rex, fidei defensor, Dominus Hiberniæ, Reverendissimo in Christo Patri Edwar- do Archiepiscopo Eborac. Per dilecto & fideli suo Thomæ Audeley Militi, domino custodi Magni Sigilli, ac Charissimo consanguineo suo Roberto Comiti Sussex salutem: Cum Presens Parliamentum nostrum apud Civitatem nostram London 3 die Novembris Anno Regni nostri vicesimo primo inchoat. & usque Westm. Prorogat. & ibidem post diversas continuaciones & Prorogaciones idem Parliamentum nostrum apud Westm. ad 14 diem Novembris apud Westminstr. etiam Prorogat. fuerat, Ibidem tunc tenendum; nos i'circo considerantes absentiam nostram a regno nostro Angliæ apud Calice
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existent

existent. in causis urgentissimis nos & rempublicam regni nostri, concernens, aliisque Considerationibus nos specialiter moventibus ac de fidelitate, integritate, industria & circumspectione vestris plenius confidentes, de advisamento & assensu consilii nostri assignamus vos & duos vestrum, Dantes vobis & Duobus vestrum plenam potestatem facultatem, & auctoritatem, hac instante die Luna ad & in quartum diem Februar. Prox. futurum usque Westm. predictum prorogandum & continuandum ibidem tunc tenendum. Et ideo vobis mandamus quod circa premissa diligenter intendatis, ac ea in forma predict. effectualiter expleatis: Datum autem universis & singulis Archiepiscopis, Episcopis, Abb. Prior. duobus Marchionib. Comitibus, Viccomitis, Baronibus, Militibus, Civibus, Burgensibus ac omnibus aliis quorum interest aut interesse poterit, in hac parte in mandatis quod ipsi omnes, &c. Singula in premissis omnibus singulis faciendum & exequendum intendentes sint consulentes & obediens prout decet. In cuius rei Testimonium has literas nostras fieri fecimus Patentes, Teste me ipso apud Westm. 4 die Novembris, anno regni nostri vicelesimo quarto.

HENRY the VIII. by the grace of God King of England and France, Defender of the Faith, Lord of Ireland To the most Reverend Father in God Edward Archbishop of York, to His trustly and well beloved Thomas Audley Knight keeper of the great Seal, and His most dear Cousin Robert Earl of Suffolk greeting. Whereas Our present Parliament begun at Our City of London, Novemb. 3. in the 21 year of Our Reign, and prorogu'd to Westminster, and there after several Continuations and Prorogations Our same Parliament was prorogu'd also at Westminster the 14th of November being then there to be held; Wetheretore upon the consideration of Our absence out of Our Kingdom of England, being at Calice for most urgent causes, Us and the Weal of Our Kingdom nearly concerning, and for other considerations the more especially moving, and more fully considring in Your Fidelity, Integrity, Industry and Circumspection, by advice and assent of Our Council, do assign you and two of you, giving you and two of you full power, leave and authority this instant Monday, and unto the 4th of February next, Our Parliament aforesaid Prorogu'd and continu'd at Westminster there to hold. And there

there command you to be diligent in the Premises, and that in the form aforesaid you effectually fulfil them. We also give command to all Archbishops, Bishops, Abbots, Priors, Marquisses, Earls, Vicounts, Knights, Citizens and Burgessees, and to all others whom these may concern, that they be obedient in the performance and execution of the premises accordingly, as it becomes them. In testimony whereof We have caus'd to be made these Our Letters Patents. Witness my Self at *Westminster, Novemb. 4. &c.* in the 20th Year of Our Raigh.

Penals.

And a King in possession of his Kingdom during his raigh may before his Coronation summon his Parliament, as taking one example in a case so clear for all: King *H. 6.* was not Crowned unill the eighth year of his raigh, and yet in his 1, 2, 3, 4, 5 and 6. years of his raigh divers Parliaments were holden, (as also our gracious Sovereign *K. Charles* called a Parliament, *Anno 1.* before his Coronation) and summoned by him the said *H. 6.* as in the Statutes may appear: For it is clearly resolved by all the Judges of *England*, That presently by descent he is absolutely and compleatly King without any essential ceremony or act to be done *ex post facto*, and that Coronation is but a royal ornament or outward solemnization of the descent, and the King is as absolute and compleat a King both for matter of Judicatory, as Grants, &c. before his Coronation as he was after.

Also the King being within age, may aswel summon his Parliaments as if he were at full age, as by the example was seen in the said *H. 6.* and *E. 6.* and observe the case of the Duchy of *Lancaster* in *Plowden's Commentaries*, 221. 6. Where it is agreed, That the person of the King is not infeebled by his nonage, for his person doth always remain of full age, aswel to make Gifts and Grants as in administration of Justice.

And the diversity of Sex maketh no difference, as by the Statute made in the first year of Queen *Mary* holden by Prerogation, c. 1. is declared.

Also a King being in possession of his Kingdom, whether by rightful Title or by wrong as an *Usurper*, He is a person able *is/*

facto to summon a Parliament, as by the example holden by *H. 6.* before and after the redemption of his Crown being removed therefrom by *Edw. 4.* wherein the said *Edward* was in his Remitter as is to be seen in *Baggot's* assize, in the 9th year of *Ed. 4.* fol. 1. 6. & *sequentium* : whereby it is said, that *H. 6.* was King in possession. And it was necessary that the Realm have a King, under whom the Laws may be holden and maintained, and therefore though he was but by usurpation, yet every act Judicially done by him, which doth concern his Jurisdiction Royal shall be good, and bind the rightful King's regrefs; and divers other Examples there are hereof. See 1 *H. 7.* fol. 3.

In ancient times after the King had summoned his Parliament to be holden at a certain day and place, Innumerable multitudes of people did make their access thereunto, pretending the privilege of right to belong to them, and not only to the Lords Spiritual and Temporal, but also to the Commonalty being Freeholders: But King *Henry 3.* having had experience of the mischiefs and inconveniences by occasion of such popular confusion, did take order and restrained that over great access. So that none might come to his Parliament but those who were specially summoned, which his Son *Edw. 1.* did carefully keep and observe, according to that ancient saying, *Ad Consilium ne accesseris ante quam voceris.* Come not to the Council till thou art call'd. And so ever since this special manner of summons of Parliament now used hath been put in practice. The usual form of summons for the Parliament for the Commonalty, is not special, but a general Writ is directed to the Sheriff of every County or Shire in *England* and *Wales*, in this form.

Rex Vic. N. Salutem, quia de advisamento & assensu Consilii nostri quibusdam arduis & urgentibus negotiis nos Statum & defensionem Regni nostri Angliæ, & Eccles. Anglicana concernent quoddam Parliamentum nostrum apud Civitatem nostram Westm. 17 die Martii Prox. futuro teneri ordinavimus, & ibidem cum Prelatis, Magnatibus & Proceribus dicti Regni nostri colloquium habere, & tractare; Tibi Precipimus, firmiter injungentes, quod facta Proclamatione in Prox. com tuo, post receptionem hujus brevis nostri tenendum die & loco Predicto, dñs Milites, gladiis cinctos, magis idoneis

& discretos cum pradiet. &c. Et Electionem illam in pleno com. tuo factam distincte & aperte, sub sigillo tuo & sigillis eorum qui Electioni illi interfuerunt nobis in Cancellarium nostram ad dictum diem & locum certifices, indilate, Teste meipso, &c. Vide Stat. 23 Hen. 6. cap. 15.

CHARLES, &c. To His dearest Cousin the Earl of Oxford. Because with the advice and consent of Our Council, upon certain difficult and urgent affairs Us, Our State, and the defence of Our Kingdom and Church of England concerning; We have ordain'd a certain Parliament of Ours to be call'd at Our City of Westminster the 17th day of March next to come, there with you and with the Prelates, Peers and Barons of Our said Kingdom to discourse and debate. We firmly enjoyning, command you upon the Faith and Allegiance by which you are bound to Us, that upon the consideration of those difficult Affairs and imminent Dangers you personally be present with Us at the said day and place, all excuses being set aside, to debate and give your Council and Advice upon the same Affairs with the said Prelates, Peers and Barons. And this as you tender Us, Our Honour, the Commonweal, the safety and defence of the Kingdom and Church, and the dispatch of the foresaid Affairs, you must in no wise omit. Witness my Self, &c.

And concerning those of Wales to be summoned to the Parliament, read the Statute thereof, 27 H. 8. c. 26. intituled, An Act for Laws and Justice to be ministred in Wales, in like form as it is in this Realm, and also that other Statute made 35 H. 8. c. 11. intituled, An Act for the due payment of Fees and Wages of Knights and Burgeses of the Parliament in Wales. And therefore see in Plowden's Commentaries 120. Sir Richard Bulkley's Case, and in Dyer 13.

And concerning those of the County-palatine of Chester, and of the City of Chester in this behalf; see the Statute made 34 Hen. 8. cap. 3.

*In Anno 1. of Q. Mary a great doubt was moved amongst the Justices and Serjeants, If the Queen's Writ of Summons of the Parliament in which the Stile or Title of *Supremum Caput Ecclesie Anglicanae*,*

Anglicana, the Supreme Head of the Church of England, were omitted, were good and sufficient or utterly void, &c. Because the said stile is united and annexed by the Statute made the 26 and 35 *H. 8.* to the Imperial Crown of the Realm, but the greater opinion was, such Summons is good enough, for they said that *Supremum Caput* is not parcel of the Queen's name, but an addition, and the words in the Statute are only in the Affirmative and not Negatively; That the stile shall be of necessity so written of the Queen. And this doubt was by *Q. Eliz.* again moved in the first Parliament, and was advised and resolved by great advise and deliberation (*ut supra*) see the Statute 1 and 2 of *Phil.* and *Mar. c. 8.* And in Mr. Fox's Acts and Monuments so: The argument of *John Hales* to the contrary, *cujuscuque potissima pars est principium*, the chiefest part of which is the beginning, which Rule is expressed in Sir *Ed. Cokes* 10 part 49. 1. But, *Ibid. fol. 161.* as the ancient rule is cited, *Quilibet potest renunciare juris Pro se interdicta*. He that lawfully can, may renounce that Law introduc'd for himself.

At every County after the delivery of the Parliament writ to the Sheriffs; Proclamation shall be made in the full County of the day and place of the Parliament, and that all men shall attend for Election of the Knights for the same County for the Parliament. The which Knights must be resident within the same County, whereof they are to be chosen, the day of the Writ of Summons of the Parliament, whereof every one ought to have 40 s. of Freehold within the said County beyond all charges. And such who have the greatest number of the said Electors, shall be returned Knights for the same County. See 7 *H. 4. c. 12.* 1 *H. 6. c. 1.* 8 *H. 6. c. 13.* and 10 *H. 6. c. 7.*

The Sheriff may examine every one of the said Electors upon the Evangelists how much he may dispend by year, if he doubt of the value thereof, 8 *H. 6. c. 15.*

The said Election shall be made in the full County between the hours of 8 and 9 before noon, 23 *H. 6. c. 15.*

The said Knights shall be returned into the Chancery by Indenture sealed between the Sheriff and the said Electors, 8 *H. 6. c. 7.* 7 *H. 4. c. 1.* 23 *H. 6. c. 6. in pasc per breve supra.*

Every Sheriff who doth not make a true return of such Election of Knights to come to the Parliament according to the Statute in that behalf made, that is to say, The Statute 8 H. 6. c. 7. shall forfeit 100 l. to the King, and 100 l. to the Knight so chosen, who shall Commence his Action within three months after the Parliament commenced. And if he so do not prosecute his Suit in effect and without fraud, any other man who will may have the said Suit, for the said 100 l. as the Knight had, and costs of Suit also shall be awarded to the said Knight, or any other who will Sue in his behalf, 23 H. 6. c. 15.

No Sheriff shall be chosen for a Knight of the Parliament, nor for a Burgess. See the Book of Entries, 411. And at a Parliament holden, 38 H. 8. it was admitted and accepted, that if a Burgess of a Parliament be made Mayor of a Town, or have Judicial Jurisdiction, or another is sick, that these are causes sufficient to choose others. And so was done by the King's Writ out of the Chancery, comprehending this matter which was in *Communi domo Parliamenti*, 7 and 38 H. 8.

In every Writ of Parliament directed to the Sheriff, this clause shall be inserted: *Electionum tuam in pleno Com. tuo factam distincte & aperte sub Sigillis tuis & Sigillis eorum qui electioni illi interfuerunt nos in Cancellariam nostram ad diem & locum in breve Content. verifices indilate*, H. 4. c. 15. You shall forthwith certifie Us in Our Chancery, of your Election made in your full County, distinctly and plainly under your Seal and the Seals of those that were present at the Election, and of the Day and Place in the Writ contain'd.

The Sheriff after the receipt of the Writ of Election, &c. shall deliver without fraud a sufficient precept under his Seal to every Mayor, and Bailiff, or Bailiffs where no Mayor is, of City and Burrough within his County, reciting in his precept the Writ of Parliament, commanding them by the said precept, If it be a City to those Citizens for the same City by Citizens, And if it be a Burrough, then Burgesses by Burgesses of the same, to come to the Parliament. And that the said Mayor, or Bailiff, or Bailiffs, where no Mayor is, shall return lawfully the said precept to the Sheriff: and those who made the Elections, and of the names of the said Citizens and Burgesses by them so chosen, 23 H. 6. c. 15.

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The Sheriff shall make a good return of his Writ, and of every return of the Major, and Bailiff, or Bailiffs where no Mayor is to him made. And if the Sheriff do contrary to this Statute made for the election of Knights, Citizens, and Burgeses to come to the Parliament, he shall incur the pain of 200 *l.* to the King, and shall be imprisoned for one whole year, without Bail or Main-prize. And the Knights for the County returned contrary to the said Ordinances, shall loose their wages by the Statute, 8 *H. 6. c. 7.* and the Sheriff shall pay 100 *l.* to every Knight, Citizen, and Burges, chosen in his County to come to the Parliament, and not duly returned, or to any other who will sue in his default by Action of Debt, with costs expended in that case: In which Suit, the Defendent shall not wage Law, nor be essoigned, *Anno 23 Hen. 6. c. 15.*

If the Mayor, and Bailif, or Bailiff, or Bailiffs where no Mayor is, do return others then those who be chosen by the Citizens and Burgeses of the Cities and Boroughs, where such Election shall be made, he shall forfeit to the King 40 *l.* and so much to the Citizen or Burges chosen to come to the Parliament and not duly returned by the Mayor or Bailiff, or Bayliffs where no Mayor is, or to any other person, who in default of such Citizen or Burges so chosen, will Sue for it by Action of debt with costs expended. And they shall have a Writ of debt for the said 40 *l.* in which the defendent shall not wage his Law nor shall be essoigned, 23 *Hen. 6. cap. 15.*

Every Knight, Citizen, or Burges, chosen and not returned, shall Commence his Action within 3 Months next after the commencing of the said Parliament. In which he must proceed effectually without fraud, and if he so do not, any other who will Sue for it, shall have the said Action for the said forfeiture, and costs in the same expended: in which the Defendent shall not wage Law, nor shall be essoigned; *Anno 23 H. 6. c. 15.*

If any Knight, Citizen, or Burges, that shall be returned by the Sheriff to come to the Parliament, be after such return put out, and another put in his place, the that is in his place so put out, if he take upon him to be a Knight, Citizen, or Burges, shall forfeit to the King 100 *l.* and so much to the Knight, Citizen, or Burges, returned by the Sheriff, and so afterwards put out; and the same Knight,

Knight, Citizen, or Burgeſe, ſo put out, ſhall have an Action of debt againſt him ſo put in his place, his Executors and Adminiſtrators, and ſhall commence his Action within 3 Months after the beginning of the Parliament; and if he Sue not, as before, any other who will ſhall have the ſaid Suit; in which the Defendant ſhall not wage his Law, nor ſhall be eſſoined; ſo that ſuch Knights of the Parliament choſen, be a Knight or ſuch Eſquire or Gentleman of the ſame County, who may be a Knight, and none to be ſuch a Knight, who ſtands in the Degree of a Yeoman; *Anno 23 H. 6. c. 15.*

All Perſons and Commonalties who ſhall be Summoned to the Parliament, ſhall come as it hath been accuſtomed of the ancient time: and he that cometh not, having no reaſonable excuſe, ſhall be amerced and otherwiſe puniſhed as of ancient time hath been uſed; *5 R. 2. Stat. 2. c. 4.*

If any Archbiſhop, Biſhop, Duke, Marquis, Earl or Baron, be Summoned by the King's Writ to come to the Parliament, and thorow ſickneſs or any other infirmity he cannot make his appearance at the ſaid Parliament, he muſt procure from the King his Warrant of abſence, as in like caſe was granted to the Abbot of *Euſham* in the 23 year of *H. 8.* in form following.

H E N R Y VIII.

By the King.

Truſty and welbeloved, We greet you well, and albeit you have monition among other Prelates of our Realm to be preſent at Our high Court of Parliament to beholden: yet nevertheless We of Our eſpecial grace conſidering your debility and age, be content and by theſe preſents liſenſe you to be abſent from Our ſaid Parliament during the continuance, prorogation, or adjournment of the ſame: the ſaid Monition, or any other Writ directed to you, or Commandment given by Us to You notwithstanding. Under Our Seal ſigned at Our Maner of Greenwich, the 6 of January in the 23 of Our Reign.

To Our truſty and welbeloved in God, the
Abbot of Our Monastery of *Euſham*.

And it appeareth to be true, which *Fortescue* saith in his 28 *cap. fol. 40.* That Acts of Parliament and Statutes in *England*, are not made only by the Princes pleasure, but also by the consent of the whole Realm: So that of necessity they must procure the Weal of the whole Realm, and in no wise tend to their hinderance, and it cannot be otherwise thought but that they are replenished with much wit and wisdom, seeing they are not ordained by the advise of one Man only, or of a 100 wise Counsellors, but of more than 300 chosen Men, which agreeth with the ancient number of ancient Senators of *Rome*.

No Baron, Knight, Citizen, or Burgeses, who shall be chosen to come to the Parliament, shall not depart untill that Parliament be ended or Prorogued, if he have not license of the Speaker, and of the Commons assembled in that Parliament, which license shall be entred in the Book of the Clerk of the Parliament appointed for the Commons House, upon pain of losing their wages, whereof all Counties and Burroughs shall be discharged, 6 *Hen. 8. cap. 16.*

Concerning the due leavying of Knights Fees, and Wages for attendance at the Parliament; see the Statute made 23 *H. 6. c. 11.*

Knights and Burgeses for the Parliament must take the *Oath of Allegiance*, and so shall Citizens and Barons for the five Ports for the Parliament, before they do enter into the Parliament House, *Anno 5 Eliz. c. 1.* and they must also take the *Oath of Supremacy*, made 7 *Jac. c. 6.* Which two Oaths shall be taken before the Lord Steward for the time being, or his Deputy or Deputies.

Memorandum, in the Statute made, *Anno 25 H. 8. c. 19.* entitled an Act concerning the submission of the Clergy to the King's Majesty, is contained, That the Convocation is and always hath been and ought to be assembled by the King's Writ, The form whereof is thus set down by Doctor *Cowell* in his Interpreter *Verbo Proclam.* First, The King directeth his Writ to the Archbishop of each Province for the Summoning of all Bishops, Deans, Archdeacons, Cathedral and Collegiate Churches, and generally all the Clergy of his Province, after their best discretions and judgments, assigning to them, the time and place in the said Writ: Then the Archbishops proceed in their accustomed course, one Example may shew both. The Archbishop of *Canterbury* upon his Writ
of

of Summons received, directeth his letters to the Bishop of *London* as his Dean Provincial: First citing him peremptorily, and then willing him in like manner to cite all the Bishops, Deans, Archdeacons, Cathedral and Collegiate Churches, and generally all the Clergy of his Province, to the place and against the day prefixed in the Writ, but directeth withal: That one Proctor sent for every Cathedral or Collegiate Church, and two for the Body of the inferior Clergy of each Diocess may suffice. By vertue of these Letters, Authentically sealed, the said Bishop of *London* sendeth the like Letters severally to the Bishops of every Diocess of the Province, citing them in like manner, and commandeth them not only to appear, but also to admonish the said Deans and Archdeacons, personally to appear in the Cathedral and Collegiate Churches, also the common Clergy of the Diocess, to send their Proctors at the day appointed in the Writ: And also will them to certifie to the Archbishops the names of all and every one so Summoned by them, in a schedule annexed to their Letters Certificatory. The Bishops proceed accordingly, and the Cathedral and Collegiate Churches: as also the Clergy make choise of their Proctors. Which done, and certified to the Bishop, he returneth all, answerable to his charge: (*Cave lector*) For the Clergy of the Convocation house, are no part or member of the Parliament, as you may see resolved by the Lord *Richard*, Lord *Windsor*, and others; in the beginning of the sixt Examination of Master *Philpot*, in the beginning of the Reign of Queen *Mary*: in Master *Foxes* Book of Martyrs, fol. 1639. contrary to the opinion of Doctor *Cowell*, ubi supra. Nevertheless it is enacted by the Statute 8 Hen. 6. c. 1. That all the Clergy called to the Convocation House by the King's Writ, and their servants and familiars shall have and fully use every such liberty and defence, in coming, abiding, and going, as the great Men and Commonalty of the Land (to be called to the Parliament of the King) shall have.

And because mention is here made of the Privileges appertaining to those of the Parliament house; take here a word or two thereof.

The words of the Statute made the 11 Hen. 6. cap 11. are as followeth, The King willing to provide for ease and tranquillity of those that come to his Parliament, hath ordained and established,

That if any assault or affray be made upon any Lord Spiritual or Temporal, Knight of the Shire, Citizen or Burghes, coming to the Parliament, or the Counsel of our Sovereign Lord the King, That then Proclamation shall be made, in the most open place of the City or Town where the affray was so made, on three several days, That the party that made such affray and assault, yield himself before the King and his Bench, within a quarter of a year after the Proclamation so made, if it be in the time of the Term, or otherwise in the next day in the time of the Term following the said quarter. And if he so do not, that he be attainted of the deed, and pay to the party grieved his double damages, to be taxed at the discretion of the Justices of the same Bench for the time being, or by inquest if it be needful: and make Fine and Ransom at the King's will, and if he come and be found guilty by inquest, examination or otherwise of such affray or assault, then he shall pay unto the party grieved thereby, his double damages found by the Inquest, or to be taxed by the discretion of the Justices, and make Fine and Ransom at the will and pleasure of our Sovereign Lord the King.

Every Knight, Citizen, Burghes, Baron of the Five Ports, or others, called in the Parliament of the King, shall have privilege of the Parliament, during the Sessions of Parliament, so that he that doth arrest any of them during that time, shall be imprisoned in the Tower by the Nether House, of which he is, and shall be put to his fine and the Keeper also, if he will not deliver him when the Serjeant at Arms doth come for him by the commandment of the House whereof he is: See *Dyer*, 60.

The servants attending upon their Masters during Parliament, who are necessary, and also such Officers as be attending upon the Parliament, as the Serjeant at Arms, the Porter of the door, Clerks, and such like; and in the same manner of their Chattels and goods necessary, so that they shall not be arrested and taken by any Officer, if it be not in case of Felony or Treason; in the same manner, as the Judges and Ministers of other Courts shall have for their servants, goods, and chattels necessary; See *Crompeons Courts*, fol. 11. a.

But the Parliament doth not give privilege, *Tempore vacationis, sed sedente Curia*; in the time of Vacation, but while the Court sits.

fits. See *Brooke's Title of privilege*, 56. It appeareth that in the Parliament 31 H. 6. in the vacation, the Parliament being continued by prorogation, *Thomas Thorpe* the Speaker was condemned in a Thousand marks damages by an Action of Trespass brought against him by the Duke of York, and was committed to prison in Execution for the same, and after when the Parliament was re-assembled, the Commons made suit to the King and Lords to have *Thorpe* their Speaker, delivered for the good exploit of the Parliament: whereupon the Dukes Counsel declared the whole cause at large, whereupon the Lords demanded the opinion of the Judges, whether in that case, *Thorpe* ought to be delivered out of prison by privilege of Parliament; The Judges made this Answer, That they ought not to determine the privilege of that High Court of Parliament: But for Declarations of proceedings in Law Courts, in case where Writs of *Superfedeas* for the privileges of the Parliament be brought unto them, they answer, That if any person that is a member of the Parliament be arrested in such case as it be not for Treason or Felony, or for surety of the Peace, or for condemnation had before the Parliament; it is used that such persons be released, and may make Attorney, so as they may have their freedom and liberty freely to attend that Parliament: Hereupon, it was concluded, That *Thorpe* should still remain in prison according to the Law, notwithstanding, the privilege of Parliament, and that he was the Speaker. Which resolution was declared to the Commons by *Walter Moile* one of the King's Serjeants at Law, and then the Commons were commanded in the King's name by the Bishop of *Lincoln*, in the absence of the Archbishop of *Canterbury* then Chancellor, to choose another Speaker.

It hath been much doubted, whether one taken in Execution during the Parliament, may be set at liberty by Writ of Parliament, as is to be seen in the first of *Eliz. 4. fol. 8. a Dyer, 60.* But at this day the Law is explained in that case by the Statute made, 1 Jac. cap. 19. Intituled, *An Act for new execution to be sued against any who shall hereafter be delivered out of prison by privilege of Parliament. And for discharge of them out of whose custody such prisoners shall be delivered.*

The Form of a Protection to be made by any person of either House of Parliament, unto such of their Servants as may stand in danger of Arresting in time of Parliament.

*W*hereas by the ancient Privileges, Laws and Customs of this Realm heretofore used and approved, The Lords Spiritual and Temporal, the Knights, Citizens, and Burgeses of the Parliament, have always had their Servants and Followers privileged and free from any molestation, trouble, arrest, or imprisonment, for some certain days, both before the beginning and after the ending of the same. And whereas at this time a Parliament is summoned, where my self being a Baron and Peer of the Realm (or Knight, or Burges) and there to make my appearance, I understand, notwithstanding, That you or some of you, have now in your hands some Process, Writ, or Warrant, to molest, arrest, imprison J. B. my household Servant in ordinary, whose attendance I have special cause to use and employ in matters which do much concern and import my Estate, and other occasions to be followed and solicited by him during this Sessions of Parliament. These are therefore to charge and command you, and every one of you, both to withdraw the same Process, Writ or Warrant, if any such be; As also, if thereby you, or any of you, have molested, arrested, or imprisoned him the said J. B. within the compass of the foresaid days of Privilege; That then upon sight hereof, you presently set him at liberty, as you or any of you will answer the contrary. Given under my Hand and Seal, the 16th day of February, 1627.

To all Mayors, Sheriffs, Bayliffs, Sergeants;
Knights, Marshals-men, and all other
his Majesty's Officers,

R. S.

The Form of a Letter directed to the Sheriff of *I.* for discharge of a Servant that is Arrested upon Execution, and during the time of the Parliament, notwithstanding his Protection.

MR. Sheriff, Whereas I was to be attended to the Parliament, I wanted one of my household Servants, a Gentleman of mine, called B. to whom I had given a Privilege for this Session of Parliament, to prevent any arrest or imprisonment for his Debts, to the end he might wait on me, and prosecute my business with more diligence and less danger of interruption in that kind. But I now understand he is in the Custody of the Sheriff of Middlesex, within the days limited, upon an Execution of 1000 l. And that he doth detain him, and will take no notice of my Privilege under my Hand and Seal, although it hath been shewed him: I have chosen rather to write to you, that you may take the ancient Privileges and Liberties of the uppermost House of Parliament, and the honour of a Peer of this Kingdom into your friendly consideration, than that I would be offensive to any of your subordinate Officers, in sending for them and the Plaintiff by a Serjeant at Arms, or to convent them before the Lords for their contempt. And, Mr. Sheriff, I am further given to understand, That the Deputy is Brother to the under-Sheriff, and that he did execute the Office the last year, which is a plain defrauding of the Law, not being three years betwixt them, being well known that his Brother doth not intermeddle in the Office at all, nor taketh any notice at all what Warrants are made forth in his Name, or what Writs are brought to his hands, for his Deputy doth take the whole benefit of the Place into his own hands. And by this means the under-Sheriff being in Gloucester-shire, he hath a colour as his Deputy not to take notice of our Privileges, being directed to the Sheriff; therewith I thought good to acquaint you, expecting your Answer, and the Release of my Servant, otherwise I purpose not to lose the privilege of a Peer of this Realm, whilst it concerns our Honour. And is no Indemnity to the Plaintiff, whose Judgment and Execution is in as much force and strength, by a late Statute, to take hold of B. afterwards, as it was before.

Con-

Concerning the upper House of Parliament, first it is observed, That thither cometh all Lords of the Parliament, as well Spiritual as Temporal, and they are summoned by the King's Writ, but *Separatim*, and not by a general Writ to the Sheriff of the County as the Commons are summoned, who are of the lower House of the Parliament, the Form of which Writ is as followeth :

Carolus &c. Charissimo Consanguineo suo Comiti Oxford. Quia de advisamento & assensu Consilij nostri, pro quibusdam arduis & urgentibus negotijs Nos stat. & afectionem Regni nostri & Ecclesie Anglicane concernent. quoddam Parlamentum nostrum apud Civitatem nostram Westm. 12. die Martij, prox. futur. teneri ordinavimus & ibidem vobiscum ac cum Prelatis, Magnatibus, & proceribus dicti Regni nostri colloquium habere & tractare, vobis sub fide & ligeantia quibus nobis tenemini firmiter injungentes, Mandamus, quod considerationem dictorum negotiorum arduorum & periculis imminentibus cessante excusatione quacunque dict. die & loco personaliter interfutis nobiscum, ac cum Prelatis, Magnatibus & Proceribus supradictis negotiis, tractare, vestramque consilium impensur. Et hoc sicut nos & honorem nostrum, & rempublicam & salvationem, & defensionem Regni & Ecclesie, predict. expeditionemque negotiorum dictorum diligitis, nullatenus omitatis Teste me ipso apud Westm. 18. die Januarij Anno Regni nostri, &c.

CHARLES, &c. To His dearest Cousin the Earl of Oxford. Because with the advice and consent of Our Council, upon certain difficult and urgent affairs, Us, Our State, and the defence of Our Kingdom and Church of England concerning ; We have ordain'd a certain Parliament of Ours to be call'd at Our City of Westminster the 12th day of March next to come, there with you and with the Prelates, Peers and Barons of Our said Kingdom to discourse and debate. We firmly enjoying, command you upon the Faith and Allegiance by which you are bound to Us, that upon the consideration of those difficult Affairs and imminent Dangers you personally be present with Us at the said day and place, all excuses being set aside, to debate and give your Council and Advice upon the same Affairs with the said Prelates, Peers and Barons. And this as you tender Us, Our Honour,

nour, the Commonweal, the safety and defence of the Kingdom and Church, and the dispatch of the foresaid Affairs, you must in no wise omit. Witness my Self, &c.

At the first day appointed by the King for the Parliament, usually the King in person doth ride thither, as it were, to open the door of their Authority, attended by all the Lords Spiritual and Temporal in their Parliament Robes; But if the King be let, *per Aggritudinem*, or by other causes, his Majesty may command the Adjournment of the Parliament to be held at some other day at his pleasure, as was done at the first Day of the Parliament, holden the first Year of the late Queen *Eliz.* as appeareth in *Dyer, fol. 20. 3. a.* Which Parliament was Prorogued by Writ Patent, under the entire Great Seal and Signet, with the hand of the Queen; by which Book the Printed Book of the Statutes may be corrected.

And the King may under his Great Seal assign two or three of the Lords of the Parliament to supply his place in Parliament, if he be sick, or will not come for any other cause, *ut factum fuit, Anno 31 Eliz.* At which time the Archbishop of *Canterbury*, the Lord Treasurer of *England*, and the Earl of *Derby*, were Commissioners under the great Seal appointed and assigned to represent her Majesty's person in Parliament.

And they do sit one space lower from the Cloath of Estate in the Parliament House. See *Crompton's Courts, fol. 12. a.*

By the Statute made *Anno 23. Hen. 8. cap. 21.* it is thus defaced, The Assent of the King by his Letters Patents under the great Seal of *England*, and signed with his Hand, and notified in his absence to the Lords of the Parliament, and Commons assembled in the higher House, is and ever was of as good force and strength, as if the person of the King had been there present, and had assented openly and publickly to the same. And such Royal assent as is aforesaid shall be taken for good and effectual to every intent, without any ambiguity of Custom or use to the contrary notwithstanding.

In this Court is attending the Lord Chancellor of *England*, or the Lord Keeper of the great Seal, or some other sage man as the King shall choose. By whom the King doth shew his mind to

the Lords. And he doth put them in remembrance of those things which are to be treated there before the Lords, who if he be no Baron, or Peer of the Realm, sitteth near the King, behind the Cloth of Estate, and is as the Speaker of the upper House of Parliament.

In the 31 Year of Hen. 8. cap. 10. Intituled, An Act concerning the Lords in the Parliament Chamber, and other Assemblies and Conferences of Council, it is Enacted as followeth:

Forasmuch as in all great Councils and Congregations of Men, having sundry degrees in the Common-wealth, it is very requisite and convenient that an Order be had and taken for the placing and setting of such persons as are bound to resort to the same; To the intent that they knowing their places, may use the same without displeasure, or let of the Council: Wherefore the King's most Royal Majesty, although it appertaineth to his Prerogative Royal, to give such Honour, Places and Reputation to his Counsellors and other his Subjects, as shall seem best to his most excellent Majesty, he is nevertheless pleased and comended for an Order to be had and taken in this his most high Court of Parliament, That it shall be enacted by authority of the same, in manner and form as hereafter followeth.

First it is Enacted by the Authority aforesaid, That no person or persons, of what estate, degree or condition soever he or they be of, (except only the King's Children) shall at any time hereafter attempt or presume to sit, and have place at any side of the Cloth of Estate, in the Parliament Chamber, neither of the one hand of the King's Highness, nor on the other, whether the King's Majesty be there personally present, or absent. And forasmuch as the King's Majesty is justly and lawfully Supreme Head on Earth of the Church of England, under God. And for the exercise of the said most Royal Dignity and Office hath made Thomas Lord Cromwell, and Lord Privy Seal, his Vice Gerent, for good and due ministration of Justice to be had and used in all Causes and Cases touching the Ecclesiastical Jurisdiction, and for the godly reformation and redress of Errors, Heresies, and Abuses in the same Church. It is therefore Enacted by Authority aforesaid. That the said Lord Cromwell, having the said Office of Vice Gerent, and all other persons who shall hereafter have the said Office of the Grant of the King's Highness,

ness, his Heirs and Successors, shall sit and be placed as well in this present Parliament, as in all Parliaments whatsoever hereafter to be holden, on the right side of the Parliament Chamber; and on the same Form that the Arch bishop of Canterbury sitteth upon; and shall have place in every Parliament to assent or dissent, as other the Lords of the Parliament.

And it is Enacted, That next to the said Vice-Cherent shall sit the Arch bishops of Canterbury and York, and then next to him, on the said form and side, the Bishop of London, and next to him, on the same form and side, the Bishop of Duresm, and next to him, on the same form and side, the Bishop of Winchester: and then all the other Bishops of both Provinces of Canterbury and York shall sit and be placed on the same side after their ancienties, as it hath been accustomed.

And for as much as such persons as now have, or hereafter shall happen to have other great Offices of the Realm, That is to say, the Office of the Lord Chancellor, Lord Treasurer, Lord President of the King's Council, the Lord Privy Seal, the Great Chamberlain of England, the Marshal of England, the Lord Admiral, the Grand Master or Lord Steward of the King's most honourable Household; the King's Chamberlain, and the King's Secretary, have not heretofore been appointed and ordered for the placing and sitting in the King's most high Court of Parliament, by reason of their Offices. It is therefore now ordered and enacted by authority aforesaid, That the Lord Chancellor, Lord Treasurer, the President of the King's Council, and the Lord Privy-Seal, being of the degrees of Barons, or above, shall sit and be placed as well in this present Parliament, as in all other Parliaments hereafter to be holden, in the left hand of the Parliament Chamber, on the higher part of the form on the same side, above all Dukes, except only such as shall be the King's Son, the King's Brother, the King's Uncle, the King's Nephew, or the King's Brother or Sister's Sons.

And it is also ordained and enacted by authority aforesaid, That the great Chamberlain, the Constable, the Marshal, the Lord Admiral, the Grand Master or Lord Steward, and the King's Chamberlain shall sit and be placed after the Lord Privy Seal, in manner and form following, That is to say, every one of them shall sit and be placed above all other personages being of one estate or degree,

that they shall happen to be of, That is to say, the Great Chamberlain first, the Constable second, the Marshal third, the Lord Admiral fourth, the Grand Master or Lord Steward fifth, and the Kings Chamberlain the sixth.

And it is also enacted by Authority aforesaid, That the Kings chief Secretary, being of the degree of a Baron of the Parliament, shall sit and be placed above and before all other Barons, not having any of the Offices aforesaid, and if he be a Bishop, That then he shall sit and be placed above all other Bishops, not having any of the Offices above remembered.

And it is also ordained and enacted by authority aforesaid, That all Dukes not before mentioned, Marquisses, Earls, Viscounts, and Barons, not having any of the Offices aforesaid, shall sit and be placed after their ancienty, as it hath been accustomed.

And it is further enacted, that if any person or persons which at any time hereafter shall happen to have any of the Offices aforesaid, of Lord Chancellor, Lord Treasurer, Lord President of the Kings Counsel, Lord privy Seal, or chief Secretary, shall be under the degree of a Baron of the Parliament: By reason whereof they have no interest to give any assent or dissent in the said House: That then in every such case, such of them as shall happen to be under the said degree of a Baron, shall sit and be placed at the uppermost part of the Sacks, in the midst of the Parliament Chamber, either there to sit upon one form, or upon the uppermost Sack: The one of them above the other in order as is above rehearsed.

Be it also enacted by authority aforesaid, That in all Tryals of Treason by Peers of this Realm: If any of the Peers that shall be called hereafter to be Tryers of such Treason shall happen to have any of the Offices aforesaid, That then they having such Offices, shall sit and be placed according to their Offices, above all the other Peers that shall be called to such Tryals, in manner and form as is above mentioned and rehearsed.

And it is also enacted by authority aforesaid; That as well in all Parliaments, as in the Star Chamber, and in all other Assemblies and Conferences of Counsel the Lord Chancellour, the Lord Treasurer, the Lord President, the Lord privy Seal, the Great Chamberlaine, the Constable, the Marshal, the Lord Admiral, the Grand Master or Lord Steward, the Kings Chamberlain, and the Kings chief Secre-

rary shall sit and be placed in such order and form: as is above rehearsed, and not in any other place, by authority of this present Act.

And in Sir Edward Coke, 11. part. fol. 1. The case concerning priority of place in the upper house of Parliament was as followeth, at the Parliament held the 39. Eliz. The case was thus :

Thomas Lawarre Knight, Lord *Lawarre*, Son and heir of *William*, Son and heir of *George*, Brother and heir of *Thomas*, Son and heir of *Thomas* Lord *Lawarre*, exhibited his petition to the Queen to this effect, That whereas *Thomas* the Great Grand-Father was called to Parliament by Writ of Summons, 3 H. 8. and afterwards this *Thomas* the Great Grand-Father dyeth ; After whose death, *Thomas* his Son, was called to divers Parliaments by Writ of Summons And afterwards by Act of Parliament 3. E. 6. for divers causes in the said Act mentioned, it was enacted, That the said *William* during his life should be disabled to claim and enjoy any dignity or superiority, in any right estate, &c. by descent, remainder, or otherwise. And afterwards the said *Thomas* the Son of *Thomas* dyeth ; after whose death the said *William* being disabled, was not called to any Parliament, by Writ of Summons, till Queen *Elizabeth* called him to Parliament by Writ of Summons, and sitteth as youngest Lord of the Parliament : And afterwards he dyeth, and now the said *Thomas* his Son being called to Parliament by Writ of Summons, sueth to the Queen that he may have place in Parliament, of his Great Grand Father (*that is to say*) between the Lord *Berkley* and the Lord *Willoughby* of *Eresby* : And the said petition was indorsed in these words ;

Her Majesty hath commanded me to signifie to your good Lordships, that upon the humble suit of the Lord *Lawarre*, She is pleased that the matter shall be considered and determined in the House.

Robert Cecil.

Which petition being read in the upper House of Parliament : The consideration of this was referred and committed to the Lord *Burley*, Lord Treasurer of *England*, and divers other Committees, who at his Chamber at *Whitehall* heard the learned Counsel on both sides, in the presence of the two chief Justices, and divers other Justices : And two objections were made against the Lord *Lawarre*. First, inasmuch that his Father was disabled, by Act of

of Parliament to claim the dignity: The petitioner may not convey by him who was disabled as heir to his Great Grand-Father, and by consequence he may not have the place of his Great Grand-Father.

But was resolved by all the Judges, That there was a difference between a personary and temporary disability, and absolute perpetual disability: As whereas one is attainted of Treason or Felony; this is absolute and perpetual disability by corruption of blood, for any of his posterity to claim any hereditament in Fee simple, either as heir to him, or any other; But disability by Parliament without any Attainder, to claim the dignity for his life, That is personal disability for his life only, and his heirs after his death may claim as heir to him, or any other Ancestor above him. The second objection is, that the said *William* hath accepted new Creation of the Queen; which dignity newly gained, descendeth to the petitioner, which he may not wave: and for that, the Petitioner may not have other place than his Father had.

To this it was answered and resolved, That the acceptance of a new Creation by the said *William* may not hurt the Petitioner, because the said *William* was at that time disabled, and in truth he was no *Baron*, but only an Esquire; so that when the old and new dignity descended together, the old shall be preferred; which resolution was well approved by all the Lords Committees, and was accordingly reported to all the Lords of the Parliament, and allowed by them all: whereupon it was ordered by the Lords, that the Queen should be acquainted with this by the Lord Keeper, which was done accordingly.

Whereupon at the said Parliament, the Lord *Lamarre* in his Parliament Robes, was by the Lord *Zouch* supplying the place of the Lord *Willoughby*, within age at that time, and the Lord *Berkely* also in his Robes, brought into the house, and placed in his said place (that is to say) next after the Lord *Berkley*, Garter King at Armes attending upon him, and doing his Office.

In the upper House of Parliament doth sit the Justices upon Sacks of Wool, *in medio Camera*; who are called thither by the Kings Writ, *quod personaliter interfuit nobiscum ac cum ceteris de consilio nostro praeiudicis negotiis, tractat. vestrumque consilium impensur*: That you may in person be present with us and the rest
of

of our Counsel to treat of the aforesaid Affairis and Business, and assist us with your Counsel. And these *negotia* (Affairs) be *ardua & urgentia negotia Regni*, the difficult and urgent Affairs of the Kingdom. &c. And their Oath amongst other things is, that they shall Counsel the King truly in his business, but they have no Voice amongst the Lords.

If the Reader be desirous to see particular cases happening in Parliament, wherein the opinion of the Judges there had been recreated: And how their opinions delivered in Parliament ought to be regarded, he may read at large in *Egertons post nati. fol. 16. & sequentibus.*

If a Writ of Error be brought in Parliament upon a Judgment given in the *Kings Bench*, the Lords of the Higher House only, without the Commons, are to examine the Errors, and that is by the advice and Counsel of the Judges, who are to inform them what the Law is, and so direct them in their Judgment, and if the Judgment be reversed, then Commandement is to be given to the Lord Chancellor to do execution accordingly. And so was done in the 7. of R. 2. in a Writ brought in Parliament by the Dean and Chapter of *Lichfield*, against the Prior and Convent of *Newport Pagnell*, as appeareth by the Record. And if the Judgment be affirmed, then the Court of *Kings Bench* are to proceed to execution of the Judgment, as appeareth in *Flowerdewes* case, 1.H.7. fol. 19.

But it is to be noted, that in all such Writs of Errors, the Lords, are to proceed according to the law, and for their Judgment therein, they are informed and guided by the Judges, and do not follow their own opinions, or discretions. See *Egertons post nati. fol. 23.*

There doth also sit the Secretaries of State, who are to answer such Letters or things passed in the Council whereof they have the keeping; And with them the Master of the Roles, But they have no Voice in Parliament, if they be not of the degree of a Baron.

Note by *Kirby*, Clerk of the Roles of the Parliament: It is thus in the Books of the Law, the 33. H. 6. c. 17. If a Bill come first to the Commons, and they do pass it; then the use is to indorse it in this forme, *Soyt Bayle a seigneurs*: And then if the Lords nor King do not alter the Bill, then it shall be inroled by the Clerk of the Parliament; and if the Bill pass, then it shall be inroled, but if it be a particular Bill, then it shall be filed upon *filaces*; and that shall

shall suffice, unless the party whom it particularly concern will sue to have it inrolled, that it may be inrolled to be sure.

If the Lords will alter a Bill, sent to them from the Commons House, in a thing that may stand with the Bill, they may do so without remanding it to the Commons. And if the Commons do grant damage for four years, and the Lords will grant it but for two years, this Bill shall be delivered again to the Commons; But if the Commons do grant but onely for two years, and the Lords do grant it for four years, then the Bill must be remanded up to the Commons, and in that case the Lords must make a Schedule of their intent, or else indorse it in this forme, *Les seigneurs se assent par durar par quater anne*: And when the Commons have the Bill again, if they do not assent to it, then it is no Act or Statute; and if the Commons do consent, then they do indorse their answer upon the *Margent* within the Bill in a certain forme.

And then it shall be delivered unto the Clerk of the Parliament, *ut supra*.

If the Bill be first delivered to the Lords, and the Bill doth pass them, they use not to make any indorsment, but to send the Bill to the Commons, and if it pass them also, it is used to be thus indorsed, *Les Communes font assentant, &c.* And therefore if *John-a-Steile* be attainted of Trespass by Parliament, if he do not come in by such a day, he shall forfeit such a sum, and the Lords do give a longer day, if it do not come to the Commons again, it is no Act or Statute, because it was not remanded again to the Commons after the enlargement of the day given by the Lords.

Every Bill that doth pass the Parliament in both Houses, shall have relation to the first day of the Parliament: And the use is, not to make mention what day the Bill was delivered into the Parliament, if no day be specially appointed by the Statute, when it shall Commence: As if one Parliament be holden by divers prorogations. *Plowdens Commentaries fol 79. a. 6.*

If a Parliament do Commence before Pentecost, and hath continuance after Pentecost, and the Commons do agree to a Bill after Pentecost, and in the same do give day till Pentecost next coming, and the Lords do so also, because the Bill shall have no relation to the first day of the Parliament. Therefore if it be not prevented, it shall be taken for that Pentecost that is past at that Session, whereas the

the intent of the Lords and Commons was, that it should be a future Pentecost after that Pentecost mentioned in the Bill. See *Brookes Prerogatives and Parliaments*, 4.

The Barons in the upper house of Parliament may in some cases give their Voices by proxy, not so in the Commons house, and those Proxies must be Barons, and of the Higher house of Parliament. But in the Commons house of Parliament it is otherwise, for the Clerk of the Parliament takes notice of the most hands or Voices sounding at once. And therefore if their assent be issuable, the Clergie may say *Per majorem numerum generalis*. So in case of Election of Crowner or a Knight of the Parliament. See *Plowdens Commentaries*, 126. a.

All the privileges which do belong to those of the Commons house of Parliament, *a fortiori*, do appertain to all the Lords of the upper house; for their persons are not only free from arrests during the Parliament, but during their lives, nevertheless the original cause is by reason they have place and Voice in Parliament: and this is manifest by express authorities grounded upon excellent reasons in the Book of Law.

And if a Baron, Viscount, Earl, Marquess, or Duke, of *England*, bring any Action real or personal, and the defendant pleadeth in abatement of the Writ, That he is no Baron, Viscount, Earl, &c. And thereupon the demandant or plaintiff pleadeth in abatement of the Writ, and taketh issue; This issue shall not be tryed by a Jury, but by the Records of the Parliament, whether he or his Ancestors, whose heir he is, were called to serve there as a Peer, or one of the Nobility of the Realm. See *Sir Edwards Cokes 5 part. 53. & 7. part f. 117. a.*

In the ancient *Britain* and *Saxon* Kings days, the Archbishops and Bishops were called to their Parliaments, or other assemblies of State; which was done not so much in respect of their tenures, for in those days all their tenures were *Francki Almenage*, but especially because the Laws and Councils of men were then most current and commendable, and had a more blessed issue and success, when they were grounded upon the fear of God, the root and beginning of wisdom. And therefore our wise and religious ancestors called thither those chief and principal persons of the Clergie, who by their place and profession, by their gravities, learning, and

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Wisdom might best advise them, what was the Law of God ; his acceptable will and pleasure : That they might form their human Laws answerable, or at the least not contrary or repugnant thereunto. Nevertheless shortly after the *Norman* Conquest, the Conquerour altered the tenure of the Bishopricks, not without some complaint and grief of the Clergie, as it is mentioned in *Matthew Paris, Anno 1070.*

And in the Constitutions of *Clarendon*, in the time of *H. 2. Anno 1164.* it is expressed in the eleventh Article.

Thereby we see the presence of the Bishops in Parliament, in respect of their Baronies, *quousque perveniatur ad diminutionem*, &c. for so even unto our times, when question is had of the attainder of any Peer, or other in Parliament, the Archbishops and Bishops depart the higher house, and do make their Proxies; for by the decrees of the Church, they may not be Judges of life and death. Ever since the Conquest the Archbishops and Bishops have no title to have place and Voice in Parliament, but only in respect of their Temporal Baronies.

And it is to be observed, that although of latter times the use and manner of penning of Statutes, is, that it is enacted by the Lords Spiritual and Temporal, and the Commons in the same assembled: yet the ancient forme was not so, which you may see exemplified in *Sir Edward Cokes 8. part, fol. 19.*

And good Acts of Parliament may be made, though the Archbishops and Bishops would not consent thereunto; for a Statute was made *Anno 1196* by the King, the Barons and the Commons (*Clero excluso*.) and this was at a Parliament holden at *St. Edmundsbury*, in the Reign of *E. 1.* as it is reported by *Jewell* Bishop of *Salisbury* against *Harding. fo. 620.* And in the province of *Milton*, in the time of *H. 8. 1172.* a matter was moved of *B. Rardy*, touching the legitimization of Bastards, born before Marriage; where it is said, That the Statute did pass intirely with the Lords Temporal, against the wills of the Lords Spiritual: which Statute is in the Books in the 20 year of *H. 8, 3. c. 9.*

And in the 11. year of *R. 2. c. 3.* It is enacted, that the Appeals, Pursuits, Accusments, Processess, Judgments, and Executions, made and given in this present Parliament, be approved, affirmed and established, as a thing duly made for the weal and profit of the

King.

King our Sovereign Lord, and all the Realm, notwithstanding that the Lords Spiritual and their procurators did absent themselves out of the Parliament, the time of the said Judgment given, for the honesty and salvation of their Estates, as it is contained in a protestation made by the Lords Spiritual, and their procurators delivered in this present Parliament.

See *Kelbaroyes* Book, fo. 184. in the 7. H. 8. The Justices did say, that our Sovereign Lord the King may well hold his Parliament by him and his Temporal Lords and by the Commons also, without the Spiritual Lords, for the Spiritual Lords have not any place in the Parliament Chamber, by reason of their Spiritualities, but only by reason of their Temporal possessions.

The Sovereign power of this high Court of Parliament is this; That albeit the Kings Majestie hath many great privileges and prerogatives, yet many things there are, not effectual in Law, to pass under the great Seal by the Kings Charter without Parliament: And upon this point it was resolved by all the Judges in the Princes case, That the Dukedom of *Cornewall, &c.* did not, nor could pass from E. 3. by his Charter made in Parliament; but went to his Son and heir apparent, and to his heirs, in form as it was intended and made in *Anno 11.* of his Reign. But of necessity it was, and so was done by authority of Parliament: which Case is notable and worth the reading. See *Sir Edm. Cokes 8, part. fo. and his 7, pars, fol. 7. a.*

The King by his Letters Patents may make a division, but cannot naturalise him to all purposes, as an Act of Parliament may do; for the Kings Charter cannot make any hereditable, in this case, that by the common Laws cannot inherit. And herewith agreeth the 36. of H. 8. *Denizon Brooke.*

Bracton in the beginning of his second Book, saith; *Nil aliud potest Rex in terris, cum sit Dei minister & vicarius, quam quod de jure potest:* and a little after, *Itaque Potestas sua est juris non injuria, & sicut sit author juris, non debet inde Injuriarum nasci occasio, unde jura nascuntur.*

And it appeareth *Fitzherberts natura Brevium*, 222. in the Writ *ad quam damnum*, that every grant of the King or gift, hath his condition expressed or employed, as by the Law annexed to it; *Itaque quod per donationem illam patria magis solito non eneretur seu gravetur.*

And therefore it was resolved by all the Judges 4. *Jacobi*, that they who digg for Salt-peter, may not digg within the Mansion house of any Subject, without his assent, for the manifest inconveniences that thereby may grow to the owner of the house. See Sir *Edward Coke* 11. part 82.

Also if Commissioners to be made Purveyers for Timber, for the Kings use, yet they cannot by that authority take Timber Trees growing upon any Mans Free-hold: for that is prohibited by *Magna Charta* c. 21. *nos, nec ballivi nostri, nec alij, capimus boscum alienum ad castra vel ad alia agenda nostra, nisi per voluntatem ejusdem boscus ille fuerit.*

A Commission was awarded to take singing Boyes in Cathedral Churches, or in other places where such are instructed, for the furnishing of the Kings Chappel. These general words by construction shall have a reasonable understanding: That is to say, such Children that be taught to sing, thereby to acquire or get their livings, such may be taken for the Kings service; But the Son of a Gentleman, or any other, who is Taught to sing for his Recreation, Ornament, or Delight, may not be taken against his will; or against the will of his Parents, or Friends, and so it was resolved by all the Judges and whole Court of Starr-Chamber, 43. *Eliz.*

If a Man be attainted of Felony or Treason, by Verdict; Outlary, Confession, &c. his Blood is corrupted: which is a perpetual and absolute disability for him or his posterity, to claim hereditament in Fee-simple, either as heir to him or any Ancestor *Paramount* him, and he shall not be restored to his blood without Parliament: and the King may give to any attainted person his life, by this Charter of Parliament. See *Stamfords plea*, 195. For the King cannot alter the Common Law, or the general customs of the Realm, such as the descent of *Gavill kinde*, *Borough, English*, or such like, without Parliament. See *Brookes Prerogative*, 15. & 11. H. 4. c. 73.

And it is set down for a rule; That if a King have a Kingdom by descent, seeing by the Laws of that Kingdom he doth inherit that Kingdom, he cannot change those Laws of himself, without consent of Parliament.

Fortescue also saith in his 9. c. fo. 25. 6. If the power of the King

King over his Subjects were Royal only, and not politic, then he might change the Laws of the Realm, and charge his Subjects with Tallages, and other Burdens, without their consent. And such is the dominion the Civil Law purports, when they say, *Quod principi placuit legis habet vigorem*. What pleases the Prince has the force of a Law. But by the Laws of this Kingdom, the King cannot by his Proclamation alter the Law; But the King may make Proclamation that he shall incur the indignation of his Majesty, that withstands it. And by his absolute authority, the King may commit any one to prison during his pleasure. See *Stamford* 72. But the penalty of not obeying his Proclamation, may not be upon pain of forfeiture of his Goods, his Lands, or his Life without Parliament. See *Crompton's Conter* 14. a & 16. 6. *sed omnes non capis hoc verbum*: But all don't understand this word. For they of another profession in Law say, that of these two, one must needs be true, that either the King is above the Parliament; that is the positive Law of the Kingdom; or else, that he is an absolute King, *Arrest. lib. Plitt. c. 16*. And therefore though it be a merciful policie, and also a politic mercy; not alterable without great peril, and to make Laws by the consent of the whole Realm, because no one party shall have cause to complain of a partialitie, yet simply to bind the King to or by those Laws, were repugnant to the nature and constitution of an absolute Monarchy.

In some special case there sometimes may be a King of Subjects without land of possession, as in the Government which *Moses* had over the Children of *Israel* in the Wilderness, and in the case which *Sir John Popham*, the late Lord-Chief Justice, did put in the Parliament, if a King and his Subjects be driven out of his Kingdom by his Enemies, yet notwithstanding he continueth still King over his Subjects, and they still are bound to him by their bonds of allegiance, wheresoever they be: But he cannot be a King without Subjects, for that were *Imperium imbelles*, and *Rex & subditi sunt relictos*.

I believe *Solomon* that saith, *per me Reges regnant & Principes justa decernunt*, By me Kings Reign and Princes decree Justice: and I make no doubt, but as God ordained Kings, and hath given Laws to Kings themselves: so he hath authorized and given power to Kings to give Laws to their Subjects, and so Kings did first make
Laws,

Laws, and then ruled by those Laws, and altered and changed them from time to time as they saw occasion, for the good of themselves and of their Subjects.

By the premises it appeareth, That Acts of Parliament and Statutes are made in this high Court of Parliament by the King, with the consent of the Commons, or by the greater part of them, for so saith *Littleton* in the 15 E. 4. fol. 2. a.

In the Parliament, if the greater part of the Members assent to the making of an Act of Parliament, and the lesser part will not agree to it, yet this is a good Act or Statute, to last in *perpetuum*: and that the Law of *Major. partis* is so in all Counsels, Elections, &c. both by the rules of the Common Law and the Civil also.

In this Court of Parliament, they do make new positive Laws or Statutes, and sometimes they enlarge some of them, as unto them seemeth good; and it is good counsel, that in making of Laws, *quoad ejus fieri possit, quæ plurima legibus definiantur, quæ paucissima verò Judicis arbitrio relinquatur.* As far as possible most things are to be defined by Laws, that as few as possible may be left to the Arbitrament of the Judge. Yet for so much as every considerable circumstance cannot be fore-seen at the time of the making of the Law, for, *rerum progressus ostendunt multa, quæ in initio præcavere seu provideri non possunt.* The Progress of Affairs shew many things, which in the beginning cannot be fore-caution'd or fore-seen. Therefore the makers of the Statute, do many times leave to be supplied by the discretion of the executioner of that Law, that thing which was not conveniently comprehended before hand, by the Wisdom of the Authors of the same: for the expounding of the Laws doth ordinarily belong to the reverend Judges, and in case of greatest difficulty of importance, to the high Court of Parliament. See *Plowdens Commentaries*, fol. 363. a. 364, and 365.

And the Judges do say, that they may not make any interpretation against the express words of the Statute, where the intent of the makers of the Law do appear to the contrary, and where no inconvenience by the Statute shall ensue; for in such cases *A verbis legum non est recedendum.* We must stick to the words of the Law.

But to exemplifie all the several kinds and forms of penning them, and the words of them taken and construed, sometimes by execution, sometimes by restriction, sometimes by implication, sometimes by dif-

disjunction; sometimes a disjunctive for a copulative, sometimes a copulative for a disjunctive, the present Tense for the future, the future for the present, sometimes by equity out of the reach of the words, sometimes taken in a contrary sense, sometimes singularly, as *Continens pro contento*, and such like, will ask a Volum by it self, and in my opinion is not incident to this discourse of the *Jurisdiction* of high Courts of Parliament.

A brief Abstract of some memorable matters done by PARLIAMENTS in this Kingdom of *England*.

B*Y* Parliament, all the wholesome fundamental Laws of this Land were and are established and confirmed.

By Act of Parliament, the Popes Power and Supremacie, and all superstition and Idolatry are abrogated, abolished, and banished out of this Land.

By Act of Parliament, Gods true Religion, worship and service are maintained and established.

By Act of Parliament, the two famous Universities of Cambridge and Oxford, have many wholesom and helpfull Immunities.

By Parliament one Pierce Gaveston, a great favorite and notable misleader of K^{ing} Edw. 2. was removed, banished, and afterwards by the Lords executed.

By Parliament, Empson and Dudley, two notorious poles of the Common-wealth, by exacting penal Laws on the Subjects, were discovered, and afterwards executed.

By Parliament, the damnable Gunpowder Treason (hatched in Hell) is recorded to be had in eternal Infamie.

By Parliament, one Sir Giles Mompesson, a Modern Caterpillar and poer of the Common wealth, by exacting upon Inholders, &c. was discovered, degraded from Knighthood, and banished by Proclamation.

By

By Parliament, Sir Francis Bacon, made by King James Barre Verulam, and Viscount St. Albans, and Lord Chancellor of England, very grievous to the Common-wealth, by bribery, was discovered and displaced.

By Parliament, Sir John Bennet, Judge of the Prerogative Court, pernicious to the Common-wealth in his place, was discovered and displaced.

By Parliament, Lyonell Cranfield (sometimes a Merchant of London) made by K. James Earl of Middlesex, and Lord Treasurer of England, hurtful in his place to the Common-wealth, was discovered and displaced.

By Parliament, one Sir Francis Mitchell, a jolly Justice of Peace for Middlesex in the Suburbs of London, another notable Canker-worm of the Common-wealth, by corruption in exacting the penal Laws upon poor Alehouse-keepers and Victuallers, &c. was discovered, degraded from Knight-hood, and utterly disabled for being Justice of Peace.

By Parliament, Spains fraud was discovered, and by an Act the two Treaties with that perfidious Nation, for the match of the Prince, our late gracious King, and restitution of the Palatinate, were dissolved and annihilated: both which had cost the King and his Subjects much Money, and much Blood. We may remember that that sage Counsellor of State Sir William Cecill, Lord Burleigh and Lord Treasurer of England, was oft-times heard to say, He knew not what an Act of Parliament might not do: which sage saying was approved by K. James, and by his Majesty alleaged in one of his published Speeches. Which being so, what Good may we not expect from the Loyalty of those worthy Gentlemen that are Members of the present Parliament, no less than the putting us into a Condition to prevent the Attempts of a Foreign Power, and likewise secure us from the Dangers of Popery and Faction at home.

Vivat Rex, Floreat Regnum, Bene valeat Parliamentum.

¶ Pap: 7 The Paragraph beginning, Charles, &c. was inserted through a mistake, and belongs to page 18 where you will find it right placed.